

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Joint Application of
Minnesota Power and Mesabi Nugget
Delaware, LLC for Approval of a Service
Extension Pursuant to Minn. Stat.
§ 216B.42

PROTECTIVE ORDER

BACKGROUND

1. This matter was referred to the Office of Administrative Hearings by the Minnesota Public Utilities Commission (Commission) for a contested case hearing in its Notice and Order for Hearing issued on September 20, 2007 in the above-entitled docket.

2. During the proceedings in this matter, Parties may request, provide, and use trade secret information or nonpublic data ("Trade Secret Information or Nonpublic Data") as defined by the Minnesota Government Data Practices Act ("Minnesota Data Practices Act"), Minnesota Statutes chapter 13.01 *et seq.*

3. Minnesota Statutes section 14.60, subdivision 2 allows the Administrative Law Judge in a contested case to conduct a closed hearing to discuss trade secret information or nonpublic data, issue necessary protective orders, and seal all or part of the hearing record.

ACCORDINGLY, IT IS HEREBY ORDERED

1. Trade Secret Information and Nonpublic Data.

(a) All Trade Secret Information and Nonpublic Data shall be furnished pursuant to the terms of this Protective Order, and shall be treated by all persons accorded access thereto pursuant to this Protective Order as constituting confidential, competitive, trade secret, and/or business information, which shall be used solely for the purpose of this proceeding (e.g., discovery, testimony, comments, information requests, motions, cross-examination and argument) and solely in accordance with this Protective Order, and shall not be used or disclosed for any other purpose or in any other manner.

All data claimed to be Trade Secret Information or Nonpublic Data shall be marked in accordance with the Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data ("Commission's Procedures").

All copies of documents so marked will be made and maintained in a manner that will facilitate maintaining confidentiality of the information. For purposes hereof, notes made pertaining to or prepared as the result of a review of Trade Secret Information or Nonpublic Data shall be subject to the terms of this Protective Order. Trade Secret Information or Nonpublic Data may not be served electronically on any party, but rather shall only be served by hand, by mail, or by other physical delivery service. Any such material received in photographic, digital or electronic formats shall be identified as protected by the disclosing party by means appropriate to the medium and shall be handled by the receiving party in a manner suitable to protect its confidentiality.

(b) Trade Secret Information or Nonpublic Data shall not include information which is demonstrated by the party in possession of the information:

(i) to have been in its possession or the possession of its officers, directors, employees, affiliates, or agents prior to receiving it from the disclosing party, and not subject to a confidentiality obligation, or

(ii) to have been in the public domain prior to the disclosure of such information by the disclosing party to the receiving party, or becomes a part of the public domain through no breach of this Order by the receiving party, or

(iii) to have been supplied to the receiving party without restriction by a third party who is under no obligation to the disclosing party to maintain such information in confidence.

The party in possession of information subject to this exclusion shall inform the disclosing party claiming the information is Trade Secret or Non-Public Data that it is subject to this exclusion prior to using it in reliance on this exclusion.

2. Use of Trade Secret Information or Nonpublic Data and Persons Entitled to Review.

(a) Persons entitled to review; use restrictions. Trade Secret Information and Nonpublic Data shall only be disclosed to those formally granted party status pursuant to Minnesota Rules 7829.0800 or 1400.6200. All Trade Secret Information and Nonpublic Data made available pursuant to this Protective Order shall be given solely to counsel for the party or other authorized persons who are designated by counsel as being the party's staff member, expert, or witness involved in this proceeding and who has executed Exhibit A to this Protective Order in a timely manner prior to receipt of the Trade Secret Information or Nonpublic Data. The Trade Secret Information or Nonpublic Data may not be used or referenced in other proceedings in Minnesota or in other jurisdictions, including but not limited to (i) use by any party in connection with any subsequent competitive bidding and/or resource acquisition process in Minnesota or other jurisdictions, or (ii) used by any party or any affiliates or consultants in connection with any efforts in Minnesota or other jurisdictions to seek to develop, amend or lobby for any legislation. Unless otherwise provided in this Protective Order, all Trade Secret Information and Nonpublic Data must be safeguarded and handled in accordance with the Commission's Procedures.

(i) Minnesota Department of Commerce. Subject to claims of privilege, relevance, and other exclusions from discovery, if a discovery request calls for the production of Trade Secret Information or Nonpublic Data, the Minnesota Department of Commerce ("Department") shall be entitled to obtain all such data and shall not be restricted in any respect from reviewing and using such data in connection with this proceeding except as provided by the Minnesota Data Practices Act and this Protective Order.

(ii) Third-Party Protections. Prior to furnishing Trade Secret Information or Nonpublic Data generated by any unaffiliated third party to a party requesting the information, the disclosing party shall be allowed 48 hours to notify the affected unaffiliated third party of the identity of the receiving party and the nature of the requested information. If the unaffiliated third party objects to its disclosure to a particular receiving party, the disclosing party shall bring a motion for a protective order within 24 hours.

(iii) Copies and databases. Neither a receiving party nor any other person who may become authorized or who otherwise may gain access to the Trade Secret Information or Nonpublic Data shall copy or duplicate it in any way, in whole or in part, except to the extent necessary for reasonable use with respect to this proceeding. Trade Secret Information and Nonpublic Data shall be managed so that it can be secured in a manner consistent with this agreement. Trade Secret Information and Nonpublic Data shall be maintained in a secure location accessible only to individuals authorized by this Protective Order to review the Trade Secret Information or Nonpublic Data.

(b) Nondisclosure Protective Agreement and Order. Prior to giving access to any Trade Secret Information or Nonpublic Data to any staff member, expert, or witness, the receiving party of such information shall cause the staff member, expert, or witness to review the terms and conditions of this Protective Order and agree in writing to comply with and be bound by it. Trade Secret Information or Nonpublic Data shall not be disclosed by a receiving party to any person who has not signed the Nondisclosure Agreement attached hereto and incorporated herein as Exhibit A. Upon execution, the Nondisclosure Agreement shall be delivered to counsel for the party disclosing the Trade Secret Information or Nonpublic Data at least 24 hours, excluding weekends and holidays, prior to the receiving party's staff member, expert, or witness gaining access to the Trade Secret Information or Nonpublic Data. If counsel for the disclosing party notifies the Administrative Law Judge of an objection within the 24 hours, no Trade Secret Information or Nonpublic Data shall be provided to the staff member, expert, or witness by the receiving party until so ordered by the Administrative Law Judge.

3. Challenges or Other Special Requests. This Protective Order establishes a procedure for the expeditious handling of material designated Trade Secret Information or Nonpublic Data. It shall not be construed as an agreement or ruling on the discoverability, confidentiality, or trade secret designation of any such information or document. Any party at any time upon five (5) business days prior notice may seek by appropriate pleading to have documents or other matters that have been designated as Trade Secret Information or Nonpublic Data removed from the protective requirements of this Protective Order or handled in a manner differently than described in this Protective Order (either for greater or lesser confidentiality protections). If the trade secret or nonpublic nature of information is challenged, resolution of the issue shall be made by the Administrative Law Judge or Commission after in camera proceedings which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such trade secret or nonpublic matter shall be present. The record of such in camera hearings shall be marked "CONTAINS TRADE SECRET INFORMATION - USE OF NONPUBLIC DATA RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. E-015/SA-07-1079," unless the Administrative Law Judge or Commission determines that the proceeding should not be classified as involving Trade Secret Information or Nonpublic Data. Notwithstanding anything herein to the contrary, a party receiving Trade Secret Information or Nonpublic Data may disclose that data if legally compelled or required to do so by any court, administrative agency, or other governmental authority, provided that the receiving party give the disclosing party notice so the disclosing party may, at its own expense, seek a protective order or other appropriate remedy prior to the receiving party disclosing the data, or waive compliance with this Order.

4. Use of Trade Secret Information and Nonpublic Data in Comments or Pleadings. Where reference to Trade Secret Information or Nonpublic Data is required in comments, information requests, motions, testimony, cross-examinations, briefs, oral arguments, or any other pleadings, transcripts or presentations submitted for the record in this proceeding, it shall be by citation of title or exhibit number or by some other non-confidential description. Any further use of or substantive reference to Trade Secret Information or Nonpublic Data shall be placed in a separate "Nonpublic" copy of the comments, information request, motion, testimony, cross-examination, brief, oral argument, pleading, transcript, or presentation submitted to the Commission or Office of Administrative Hearings pursuant to the terms of the Commission's Procedures. This "Nonpublic" copy shall be served only on a party's counsel of record who has signed a Nondisclosure Agreement. All the protections afforded in this Protective Order apply to materials prepared and distributed under this paragraph.

5. Use of Trade Secret Information and Nonpublic Data in Depositions. If, in the course of depositions, counsel for any party concludes that testimony or exhibits will involve Trade Secret Information or Nonpublic Data, counsel shall request that the court reporter record such testimony in a confidential transcript that is marked "CONTAINS TRADE SECRET INFORMATION- USE OF NONPUBLIC DATA RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. E-115/SA-07-15079." All Exhibits which have been marked as involving Trade Secret Information or Nonpublic Data shall be attached to the confidential transcript and marked consistent with the Commission's Procedures. Each party has the right to identify a transcript or exhibits as including Trade Secret Information

or Nonpublic Data pursuant to this paragraph for up to three (3) business days after the deposition is completed.

6. Use of Trade Secret Information and Nonpublic Data in Hearings or Commission Meetings. The receiving party shall not use Trade Secret Information or Nonpublic Data in a hearing without first (a) providing prior notice to the disclosing party regarding the information to be used and (b) conferring with the disclosing party regarding limitations or procedures that can be used to avoid disclosing the confidential aspects of the information at issue to persons not otherwise entitled to receive such information. If the parties cannot reach agreement regarding the use of such information, then the dispute shall be submitted to the Administrative Law Judge or the Commission before the information is used or publicly disclosed. Without limiting the foregoing, no party shall refer to Trade Secret Information or Nonpublic Data in oral testimony, cross-examination, or argument except in accordance with this paragraph.

7. Return or Destruction. Unless otherwise ordered, all Trade Secret Information and Nonpublic Data, including transcripts of any depositions to which a claim of trade secret or nonpublic status is made, shall remain under seal, shall continue to be subject to the protective requirements of this Protective Order and, except as provided in Paragraph 11, shall within 30 days after final settlement or conclusion of this proceeding, including administrative or judicial review thereof, either (i) be returned to counsel for the disclosing party, or (ii) destroyed and a certificate of destruction provided to counsel for the disclosing party, unless otherwise agreed by the disclosing party, except that the receiving party may in all cases retain a copy of such documents to the extent required to be maintained pursuant to regulatory requirements, in which case it shall continue to be maintained subject to the protections of this Protective Order.

8. Preservation of Non-Publicity. All persons who may be entitled to receive or who are afforded access to any Trade Secret Information or Nonpublic Data by reason of this Protective Order shall neither use nor disclose the Trade Secret or Nonpublic Data for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of this proceeding, and then solely as contemplated herein, and shall take reasonable precautions to keep all Trade Secret Information and Nonpublic Data secure and in accordance with the purposes and intent of this Protective Order.

9. Reservation of Rights. The parties affected by the terms of this Protective Order further retain the right to question, challenge, and object to the admissibility of any and all data that comes within the scope this Protective Order on the grounds of relevancy or materiality.

10. Inadvertent Disclosure. No party shall have waived its right to designate any documents, data, information, studies, or other materials as Trade Secret Information or Nonpublic Data by inadvertent disclosure, provided the disclosing party thereafter gives written notice to the recipient(s) that the material should have been designated as Trade Secret Information or Nonpublic Data. From and after receipt of such notice, the previously disclosed material subsequently identified as Trade Secret Information or Nonpublic Data shall be marked as Trade Secret Information or Nonpublic Data by the receiving party and treated as such under the terms of this Protective Order.

11. Information Provided to State Agencies. The files of the Public Utilities Commission, the Office of Administrative Hearings, the Department of Commerce, the Office of the Attorney General, and other state agencies containing Trade Secret Information or Nonpublic Data shall be treated as required by Minn. Stat. §§ 13.01, *et seq.* and 138.161, *et seq.* and shall not be subject to the return requirements of this Protective Order. Notwithstanding the restrictions set forth in paragraphs 1-9 above, employees of the state agencies are not required to sign Exhibit A to receive Trade Secret Information or Nonpublic Data.

Dated: October 3, 2007

s/Bruce H. Johnson

BRUCE H. JOHNSON
Assistant Chief Administrative Law Judge

STATE OF MINNESOTA
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EXHIBIT A

In the Matter of the Joint Application of
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**NON-DISCLOSURE AGREEMENT FOR
TRADE SECRET INFORMATION AND
NONPUBLIC DATA**

I, the undersigned, hereby acknowledge that I have read the attached Protective Order dated October 3, 2007, in Minnesota Public Utilities Commission Docket No. E-115/SA-07-1079, OAH Docket No. 4-2500-19221-2, and understand the terms thereof and agree to be bound by all such terms. Without limiting the generality of the foregoing, I agree not to disclose any materials or information designated Trade Secret or Nonpublic, or disclose any copies of or extracts from such materials or information, to any person or entity not authorized to receive such materials or information under the terms of said Protective Order. I further agree to use any Trade Secret or Nonpublic materials disclosed to me solely for the purpose of this proceeding and for no other purpose.

I hereby submit myself to the jurisdiction of the Office of Administrative Hearings in Minnesota, the Minnesota Public Utilities Commission, and the Minnesota District Court for the Second Judicial District (Ramsey County) for the purpose of enforcing said Protective Order.

Date: _____	_____
	Signature

	Type or Print Name

	Address

	Name of Employer

	Name of Party

	Signatory's Role in Proceeding

